



WISCONSIN REGULATORY DIGEST

**A Publication of the
DEPARTMENT OF REGULATION AND LICENSING FOR
CEMETERY AUTHORITIES, CEMETERY SALESPERSONS AND PRENEED SELLERS
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Court of Appeals Decision Concerning Joint Ownership

On September 10, 1998, the Court of Appeals, District IV, affirmed the judgment of the circuit court and concluded that Cemetery Services International, Inc., and Wisconsin Funeral Services, Inc., under the undisputed facts of the case, have impermissible financial connections with each other in violation of the plain language of sections 157.067(2) and 445.12(6) of the Wisconsin Statutes. The court also concluded that these sections of the statutes are not unconstitutional.

Legislative Changes

1997 Wis. Act 139: Under the new law, effective May 5, 1998, an examining board, the Department, and other regulatory authorities are authorized to issue administrative warnings. An administrative warning may be issued to close an investigation if a regulatory authority determines that no further action is warranted

because the complaint involves a first occurrence of a minor violation and the warning protects the public.

An administrative warning puts the professional on notice that if the misconduct is repeated, the incident that was the basis for the warning can be used to prove that the person knew the conduct was prohibited. A warning is not discipline and may be issued without a formal complaint or a hearing. The contents of the warning shall be private and confidential. A credential holder may have a warning reviewed before the department or board that issued the warning. The act requires the department to promulgate rules establishing uniform procedures for administrative warnings. 1997 Wis. Act 139 is available from the department or can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

1997 Wis. Act 191: In April 1998, legislation was enacted which provides for suspension of credentials for failure to pay family support or for failure to comply with a subpoena or warrant related to paternity or support proceedings. The determination of failure to pay family support or failure to comply with a warrant or subpoena will be made by county support agencies or the Department of Workforce Development.

The Department of Workforce Development, after proper notice and provision for hearing, will certify to the Department of Regulation and Licensing that a professional who holds a credential issued by the department, or who is applying for a credential is

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delinquent in support or has failed to comply with a subpoena or warrant. The department then shall restrict, limit or suspend a credential or deny an application for an initial credential or for renewal of a credential. The credential will remain restricted, limited or suspended until the department receives notification of release from the Department of Workforce Development. However, credentials shall not be sanctioned for more than five years, if instituted because of delinquency in support, or for more than six months if instituted for failure to comply with a subpoena or warrant. This act became effective in April 1998.

The new Family Support Collection Act also requires the Department of Regulation and Licensing to collect social security numbers from all individuals who apply for new credentials. Applications from individuals who do not submit their social security number will be denied. The social security numbers collected may be disclosed only to the Department of Workforce Development for the purpose of enforcing the Family Support Collection Act, or the Department of Revenue for the purpose of checking for tax delinquencies. 1997 Wis. Act 191 is available in most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

1997 Wis. Act 237: Since 1996, the law has required the department to verify that applicants for credential renewal are not delinquent in payment of Wisconsin state taxes. The department is required to deny renewal if the Department of Revenue certifies that an applicant is tax delinquent.

Effective January 1, 1999, the scope of the law will expand to apply to other state agencies, including the Department of Transportation and the Department of Natural Resources. The law will also change to include applicants for new licenses and current credential holders. After January 1, 1999, the Department of Regulation and Licensing is required to deny the applications for an initial credential if the applicant is certified by the Department of Revenue as being liable for delinquent state taxes. The Department of Regulation and Licensing will also be required to revoke the credential of current credential holders who are tax delinquent.

A person denied or revoked because of a tax delinquency status may request the Department of Revenue to review the certificate of tax delinquency at a hearing.

The new law, 1997 Act 237, (section 307 and sections 532-551) is available at most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Sale of Cemeteries

Since the last issue of the Regulatory Digest, the Department of Regulation and Licensing has approved the conveyance of the following cemeteries or interests in cemeteries:

Highland Management Corporation (HMC) was previously approved to convey the assets of Highland Memory Gardens Cemetery to the Loewen Group International, Inc.; however, the Department subsequently approved a modified transaction, whereby the owners of HMC sold all of their stock in HMC to Loewen, rather than the assets of the cemetery. Dated: 5/7/98.

Rest Lawn Memorial Park Cemetery Association was approved to transfer the management and operation of Restlawn Memorial Park Cemetery in the Town of Grand Rapids, WI, to Great Lakes Cemeteries I, a wholly-owned subsidiary of the Loewen Group International, Inc. The association continues to own the cemetery. Dated: 8/2/98.

Roselawn Operations, Inc., which managed the Roselawn Memory Gardens Cemetery in Lake Geneva, WI, was approved to sell all of its stock to the Loewen Group International, Inc. The Roselawn Memory Gardens Association continues to own the cemetery. Dated: 6/11/98.

Shirley Buttolph, was approved to sell her outstanding shares of stock in Cemetery Management, Inc., to the Loewen Group International, Inc. Cemetery Management, Inc., manages the Sunset Memory Gardens Cemetery in Madison. The Sunset Memory Gardens Cemetery Association owns Sunset Memory Gardens Cemetery. Dated: 8/26/98.

Sunset Ridge, Inc., the owner and operator of Sunset Ridge Memorial Park Cemetery in Kenosha, WI, was approved to sell all of its operating assets to the Loewen Group International, Inc., or its assignee, SR Acquisition, Inc. Dated: 7/21/98.

Rest Lawn Memorial Park Association, the owner and operator of Restlawn Memorial Park Cemetery in Wausau, WI, was approved to sell all of its assets to the Tribute Companies, Inc., of Delafield, WI. Dated: 7-11-98.

Issues Relating to Joint Ownership of Funeral Homes and Cemeteries

The Department of Regulation and Licensing and the Funeral Directors Examining Board have spent considerable time during the past year or two, determining whether persons who intended to purchase a Wisconsin cemetery or funeral home had any kind of ownership interest in both a Wisconsin cemetery and a Wisconsin funeral home. Purchasers have had to make arrangements to avoid such relationships. What is not so well known by some cemeteryans and funeral directors, however, is that both the cemetery and the

funeral director laws prohibit a cemetery owner or officer from being an owner or director of a funeral establishment and vice versa. This prohibition applies regardless of whether the owner or officer receives any payment for serving in that capacity.

This law may appear a bit harsh when faced with the practicalities of operating cemeteries in rural communities where the funeral director is the primary person who can be contacted for making burial arrangements at a cemetery. However, many practical relationships and arrangements for providing timely and professional services are still feasible and, admittedly, often necessary.

Connection With Funeral Establishment Prohibited

The following paragraphs quote s. 157.067, Wis. Stats. Note the exceptions in subsection (2m).

(1) In this section, "funeral establishment" has the meaning given in s. 445.01 (6).

(2) No cemetery authority may permit a funeral establishment to be located in the cemetery. No cemetery authority may have or permit an employee or agent of the cemetery to have any ownership, operation or other financial interest in a funeral establishment. Except as provided in sub. (2m), no cemetery authority or employee or agent of a cemetery may, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of any kind from a funeral establishment or from an owner, employee or agent of a funeral establishment.

(2m) A cemetery authority may accept a fee or remuneration from a funeral establishment or from an owner, employee or agent of a funeral establishment if all of the following requirements are satisfied:

(a) The fee or remuneration is a payment to the cemetery authority for a burial in the cemetery authority's cemetery.

(b) The fee or remuneration payment is made on behalf of the person who is responsible for paying for the funeral establishment's services.

(c) The funeral establishment will be reimbursed for the fee or remuneration by charging the person who is responsible for paying the funeral expenses an amount that is identical to the amount of the fee or remuneration paid by the funeral establishment to the cemetery authority.

Cemetery Task Force

Secretary Marlene Cummings has formed a multi-disciplinary task force to review the laws which regulate cemeteries in Wisconsin and to make recommendations for revising these laws. Two representatives of the Badger State Cemetery Association and a representative from both the

Wisconsin Funeral Directors Association and the Funeral Service Alliance of Wisconsin have been invited to membership. So have other ceterians, and many others who represent interests relating to cemeteries. The creation of this task force was the result of serious problems experienced with the Evergreen Cemetery in Milwaukee. The cemetery was very poorly maintained, there were allegations of stacking bodies, and there were problems locating graves. Several bodies were exhumed. Some were in the proper location. Others were not. The most serious problem relating to this situation is that Wisconsin statutes give the Department of Regulation Licensing very little authority to regulate the maintenance of cemeteries. Another problem is that municipalities are required to take over abandoned cemeteries and operate them at taxpayers' expense. We'll tell you more about the recommendations of the task force in future editions of the Regulatory Digest.

Sale of Funeral Homes

Charon Holdings Corp. has sold its stock ownership, including its wholly-owned subsidiary, Charon of Wisconsin, Inc., to Hamilton Funeral Service Centers, a California corporation. The sale affects 18 funeral establishments which were sold to Charon by the Loewen Group International, Inc., last year.

Equity Corporations International, Inc., (ECI) and its subsidiary, ECI Services of Wisconsin, Inc., have merged with Service Corporation International (SCI). As a result of this transaction, the following 13 funeral establishments, some of which, incidentally, had been purchased by ECI during the past year, have changed ownership: Molten-Bell & Son Funeral Home in South Milwaukee, Schramka-Herrick Funeral Home in Menomonee Falls, Schramka Funeral Home in Milwaukee (Burleigh St.), Schramka-Gunther Funeral Home in Cedarburg, Schramka-Rembrowski Funeral Home in St. Francis, Schramka-Densow Funeral Home in Thiensville, Schramka-Nero Funeral Home in Cudahy, Schramka Funeral Home in Milwaukee (Appleton Ave.), Schramka-Matenaer Funeral Home in Hartford, Fuller-Speckien Funeral Home in Eau Claire, Peterson-Volker Funeral Chapel in Chippewa Falls, Steinhaus Funeral Home in Montello (ECI Services of Wisconsin, Inc.), and Steinhaus Funeral Home in Westfield. This merger again raises the joint ownership issue discussed on page 1.

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(608) 266-5511

After dialing this number you are asked to press various extensions. For the following requests, please press numbers as noted:

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Whether A Person is Licensed	Press 21
Change of Address or Name	Press 21
Application Processing & Requirements	Press 441
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Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>
Send comments to dorl@dr1.state.wi.us

Copies of Regulatory Digest on the Web

See Web Site listed above for past issues of digest(s).

Wisconsin Statutes and Code

Copies of the Wisconsin Statutes and Administrative Code Relating to Cemetery Regulation can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated June, 1997.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

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